IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 200 of 2006

Pradeep Kumar Jain
S/o Shri Anand Prakash Jain
R/o Shop "Anand Hardware" 66/68 (Old No. 65)
Raja Road, Dehradun
District – Dehradun ...Applicant

Versus

1. State of Uttaranchal
2. Praveen Kumar Nagalia
   S/o Late Shri Sewak Ram Nagalia
   R/o 66/68 (old No. 65), Raj Road,
   District – Dehradun ...Respondents

Sri Lokendra Dobhal, learned counsel for the applicant.
Sri Nandan Arya and Sri Manoj Kumar Joshi, learned A.G.A. for the State

Hon'ble J. C. S. Rawat, J.

This petition u/s 482 Cr.P.C. has been directed to quash the complaint and the summoning order dated 17.05.2001 passed by the trial court in criminal case No. 1436 of 2003 Praveen Kumar Nagalia Vs. Pradeep Kumar Jain and another u/s 138 of N.I. Act pending before the court of Special Judicial Magistrate, IInd Dehradun.

Brief facts for the disposal of this petition are that the applicant issued a cheque for Rs. 50,000/- drawn on Punjab National Bank, Arhat Bazar, Dehradun on 31.03.2001 to the complainant which was dishonoured on the ground that there was insufficient fund on the account of the applicant. On receipt of the intimation, the complainant sent the notice making demand for payment within 15 days from the date of receipt of the notice. The accused No. 1 refused to receive the notice sent under registered A.D. but he has received the said notice which was sent under U.P.C. as the notice, sent under U.P.C., has not returned. The complaint was filed within the stipulated period and the applicant examined himself u/s 200

Cr.P.C. and thereafter cognizance was taken by the Magistrate against the accused-applicant.

Feeling aggrieved by the complaint as well as the summoning order, the present petition has been filed.

Learned counsel for the petitioner contended that the impugned order is bad in law and the learned Magistrate has passed the said order without considering the facts and circumstances of the case and without going through the material available on record. The learned counsel for the applicant further contended that there is no legal evidence in support of the prosecution and only the photocopies were filed. It was further contended that the complaint does not indicate as to when the said notice was refused by the applicant. Learned counsel for the applicant further contended that he never refused to take the notice. It was further contended that the complainant should have mentioned the date of the service of the notice by refusal. Learned A.G.A. refuted the contention. Perusal of the record reveals that the complaint was filed before the court and thereafter the applicant was examined u/s 202 Cr.P.C. He has also supported the version on oath indicating in the complaint. The photo copies filed alongwith the complaint is only supporting document at the time of taking of the cognizance. The complainant can file these papers during the evidence. The complainant had the liberty to adduce these evidence at the stage of the trial whereas the date of the notice is concerned, it is also a factual question and it can only be decided after adducing the evidence by the complainant. U/s 482 Cr.P.C. this court cannot enter into the controversy as to whether the allegations made in the complaint are supported by the oath is correct or the version as has been indicated in the petition is correct.

The power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to quash the same in exercise of the inherent

powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. {See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.

It has been held in M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822 that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. {State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.

In view of the above discussion, I am of the view that the petition is devoid of merit is liable to be dismissed and the same is accordingly dismissed.

It was further requested by the learned counsel for the applicant that the personal attendance of the applicant may be exempted during the trial. Learned counsel for the applicant relied upon the judgment of the Apex Court rendered in 2005 SCC (Cri) S.V. Muzumdar and others Vs. Gujrat State Fertilizer Co. Ltd. and others. The applicant may file application before the trial court for personal exemption u/s 205 Cr.P.C. and the learned Magistrate after going through the judgment of the Apex Court can consider the circumstance of the case and pass the suitable order in light of the observation made in the judgment of the Apex Court.

(J. C. S. Rawat, J.)

4th April, 2006
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